

Assembly Bill No. 2979

CHAPTER 374

An act to add Section 2628 to the Family Code, to amend Section 7150.5 of the Government Code, and to amend Sections 18001, 19006, 19052, 19180, 19354, 20503, 20505, 20514, 20563, 20642, and 20645 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 4, 2002. Filed
with Secretary of State September 5, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2979, Committee on Revenue and Taxation. Franchise Tax Board: administration of taxes.

The Personal Income Tax Law provides a credit against the taxes imposed by that law to residents for specified taxes paid to another state on income derived from sources within that state.

This bill would provide that income derived from sources within that state shall be determined by applying specified nonresident sourcing rules.

The Personal Income Tax Law generally provides that whenever a joint income tax return is filed by a husband and wife the liability for the tax is joint and several. Existing law allows a court in a proceeding for dissolution of marriage, under specified conditions, to revise the income tax liabilities of the husband and wife. Under existing law, a court may not revise the income tax liabilities of a husband and wife if the gross income reported on the joint return exceeds \$50,000 or if the liability of the relieved spouse exceeds \$2,500.

This bill would preclude a court from revising the joint and several liabilities of a husband and wife if the gross income reported on the joint return exceeds \$150,000, or if the liability of the relieved spouse exceeds \$7,500.

The Gonsalves-Deukmejian-Petris Senior Citizens Property Tax Assistance Law provides for payment of assistance by the Franchise Tax Board to claimants, whether those claimants own or rent their residence, in accordance with schedules that reduce the amount of assistance provided as the amount of a claimant's household income increases along a specified scale of household income amounts.

This bill would also make technical, clarifying corrections to that law.

Existing law provides for the administration of income and bank and corporation tax laws.

This bill would make technical changes to those laws by deleting obsolete language, providing clarification, and correcting erroneous cross-references.

The people of the State of California do enact as follows:

SECTION 1. Section 2628 is added to the Family Code, to read:

2628. Notwithstanding Sections 2550 to 2552, inclusive, and Sections 2620 to 2624, inclusive, joint California income tax liabilities may be revised by a court in a proceeding for dissolution of marriage, provided the requirements of Section 19006 of the Revenue and Taxation Code are satisfied.

SEC. 2. Section 7150.5 of the Government Code is amended to read: 7150.5. “Agency” means:

(a) The Department of Fish and Game with respect to a state tax lien created under Section 8048 of the Fish and Game Code.

(b) The Director of Employment Development with respect to a state tax lien created under Section 1703 of the Unemployment Insurance Code.

(c) The Franchise Tax Board with respect to a state tax lien created under Section 19221 of the Revenue and Taxation Code.

(d) The State Board of Equalization with respect to a state tax lien created under Section 6757, 8996, 30322, 32363, or 38532 of the Revenue and Taxation Code.

(e) The Controller with respect to a state tax lien created under Section 3423 or 3772 of the Public Resources Code or Section 7872 or 16063 of the Revenue and Taxation Code.

SEC. 3. Section 18001 of the Revenue and Taxation Code is amended to read:

18001. (a) Subject to the following conditions, residents shall be allowed a credit against the “net tax” (as defined by Section 17039) for net income taxes imposed by and paid to another state (not including any preference, alternative, or minimum tax comparable to the tax imposed by Section 17062) on income taxable under this part:

(1) The credit shall be allowed only for taxes paid to the other state (not including any preference, alternative, or minimum tax comparable to the tax imposed by Section 17062) on income derived from sources within that state which is taxable under its laws irrespective of the residence or domicile of the recipient.

This paragraph shall not apply to residents to whom subdivision (b) of Section 17014 applies.

(2) The credit shall not be allowed if the other state allows residents of this state a credit against the taxes imposed by that state (not including



any preference, alternative, or minimum tax comparable to the tax imposed by Section 17062) for “net tax” (as defined by Section 17039) paid or payable under this part.

(3) The credit shall not exceed the proportion of the “net tax” (as defined by Section 17039) payable under this part as the income subject to tax in the other state (not including any preference, alternative, or minimum tax comparable to the tax imposed by Section 17062) and also taxable under this part bears to the taxpayer’s entire income upon which the “net tax” (as defined by Section 17039) is imposed by this part.

(4) No credit shall be allowed under this section for any tax imposed by Section 17062.

(b) For purposes of this section, the amount of “net income taxes” paid to another state shall include the taxpayer’s pro rata share of any taxes on, or according to, or measured by, income or profits paid or accrued, which were paid by an S corporation, as provided by Section 18006.

(c) For purposes of this section, “income derived from sources within that state” shall be determined by applying the nonresident sourcing rules for determining income from sources within this state, as specified in Chapter 11 (commencing with Section 17951), and the regulations thereunder.

SEC. 4. Section 19006 of the Revenue and Taxation Code is amended to read:

19006. (a) The spouse who controls the disposition of or who receives or spends community income as well as the spouse who is taxable on the income is liable for the payment of the taxes imposed by Part 10 (commencing with Section 17001) on that income.

(b) Whenever a joint return is filed by a husband and wife, the liability for the tax on the aggregate income is joint and several. The liability may be revised by a court in a proceeding for dissolution of the marriage of the husband and wife, provided:

(1) The order revising tax liability may not relieve a spouse of tax liability on income earned by or subject to the exclusive management and control of the spouse. The liability of the spouse for the tax, penalties, and interest due for the taxable year shall be in the same ratio to total tax, penalties, and interest due for the taxable year as the income earned by or subject to the management and control of the spouse is to total gross income reportable on the return.

(2) The order revising tax liability:

(A) Must separately state the income tax liabilities for the taxable years for which revision of tax liability is granted.

(B) Shall not revise a tax liability that has been fully paid prior to the effective date of the order; however, any unpaid amount may be revised.



(C) Shall become effective when the Franchise Tax Board is served with or acknowledges receipt of the order.

(D) Shall not be effective if the gross income reportable on the return exceeds one hundred fifty thousand dollars (\$150,000) or the amount of tax liability the spouse is relieved of exceeds seven thousand five hundred dollars (\$7,500) unless a tax revision clearance certificate is obtained from the Franchise Tax Board and filed with the court.

(c) Notwithstanding subdivisions (a) and (b), whenever a joint return is filed by a husband and wife and the tax liability is not fully paid, that liability, including interest and penalties, may be revised by the Franchise Tax Board as to one spouse.

(1) However, the liability shall not be revised:

(A) To relieve a spouse of tax liability on income earned by or subject to the exclusive management and control of the spouse. The liability of the spouse for the tax, penalties, and interest due for the taxable year shall be in the same ratio to total tax, penalties, and interest due for the taxable year as the income earned by or subject to the management and control of the spouse is to total gross income reportable on the return.

(B) To relieve a spouse of liability below the amount actually paid on the liability prior to the granting of relief, including credit from any other taxable year available for application to the liability.

(2) The liability may be revised only if the spouse whose liability is to be revised establishes that he or she did not know of, and had no reason to know of, the nonpayment at the time the return was filed. For purposes of this paragraph, “reason to know” means whether or not a reasonably prudent person would have had reason to know of the nonpayment.

(3) For purposes of this section, the determination of the spouse to whom items of gross income are attributable shall be made without regard to community property laws.

(4) The determination of the Franchise Tax Board as to whether the liability is to be revised as to one spouse shall be made not less than 30 days after notification of the other spouse and shall be based upon whether, under all of the facts and circumstances surrounding the nonpayment, it would be inequitable to hold the spouse requesting revision liable for the nonpayment. Any action taken under this section shall be treated as though it were action on a protest taken under Section 19044 and shall become final upon the expiration of 30 days from the date that notice of the action is mailed to both spouses, unless, within that 30-day period, one or both spouses appeal the determination to the board as provided in Section 19045.

(5) This subdivision shall apply to all taxable years subject to the provisions of this part, but shall not apply to any taxable year which has been closed by a statute of limitations, res judicata, or otherwise.



SEC. 5. Section 19052 of the Revenue and Taxation Code is amended to read:

19052. Notwithstanding any other provision of this part to the contrary, adjustments to refundable credits (including credits claimed on or after January 1, 2001, in accordance with Section 17052.6) may be made pursuant to Section 19054, and claimants shall have the right to claim a refund of adjusted amounts within the period provided in Section 19306, 19307, 19308, or 19311, whichever period expires later.

SEC. 6. Section 19180 of the Revenue and Taxation Code is amended to read:

19180. (a) In any proceeding involving the issue of whether or not any person is liable for a penalty under Section 19177, 19178, or 19179, the burden of proof with respect to that issue shall be on the Franchise Tax Board.

(b) Sections 19041 to 19049, inclusive, (relating to deficiency procedures) shall not apply with respect to the assessment or collection of the penalties provided by Section 19177, 19178, or 19179.

(c) (1) If, within 30 days after the day on which notice and demand of any penalty under Section 19177 or 19178 is made against any person, that person pays an amount which is not less than 15 percent of the amount of that penalty and files a claim for refund of the amount so paid, no levy or proceeding in court for the collection of the remainder of that penalty shall be made, begun, or prosecuted until the final resolution of a proceeding begun as provided in paragraph (2). Notwithstanding Section 19381, the beginning of that proceeding or levy during the time that prohibition is in force may be enjoined by a proceeding in the superior court. Nothing in this paragraph shall be construed to prohibit any counterclaim for the remainder of that penalty in a proceeding begun as provided in paragraph (2).

(2) If, within 30 days after the day on which the claim for refund of any partial payment of any penalty under Section 19177 or 19178 is denied (or, if earlier, within 30 days after the expiration of six months after the day on which a claim for refund was filed), the person fails to begin a proceeding in the superior court for the determination of the liability for that penalty, paragraph (1) shall cease to apply with respect to that penalty, effective on the day following the close of the applicable 30-day period referred to in this paragraph.

(3) The running of the period of limitations provided in Section 19371 on the collection by levy or by a proceeding in court in respect of any penalty described in paragraph (1) shall be suspended for the period during which the Franchise Tax Board is prohibited from collecting by levy or a proceeding in court.



SEC. 7. Section 19354 of the Revenue and Taxation Code is amended to read:

19354. If the amount allowable as a credit under Section 19002 (relating to credit for tax withheld) and the amount, if any, allowable as a refundable tax credit (including the Child and Dependent Care Credit allowable under Section 17052.6) exceeds the tax imposed by Part 10 (commencing with Section 17001), against which the credits are allowable, the amount of the excess shall be considered an overpayment.

SEC. 8. Section 20503 of the Revenue and Taxation Code is amended to read:

20503. (a) “Income” means adjusted gross income as defined in Section 17072 plus all of the following cash items:

- (1) Public assistance and relief.
- (2) Nontaxable amount of pensions and annuities.
- (3) Social security benefits (except Medi-Care).
- (4) Railroad retirement benefits.
- (5) Unemployment insurance payments.
- (6) Veteran’s benefits.
- (7) Exempt interest received from any source.
- (8) Gifts and inheritances in excess of three hundred dollars (\$300), other than transfers between members of the household. Gifts and inheritances includes noncash items.
- (9) Amounts contributed on behalf of the contributor to a tax-sheltered retirement plan or deferred compensation plan.
- (10) Temporary worker’s compensation payments.
- (11) Sick leave payments.
- (12) Nontaxable military compensation as defined in Section 112 of the Internal Revenue Code.
- (13) Nontaxable scholarship and fellowship grants as defined in Section 117 of the Internal Revenue Code.
- (14) Nontaxable gain from the sale of a residence as defined in Section 121 of the Internal Revenue Code.
- (15) Life insurance proceeds to the extent that the proceeds exceed the expenses incurred for the last illness and funeral of the deceased spouse of the claimant. “Expenses incurred for the last illness” includes unreimbursed expenses paid or incurred during the income calendar year and any expenses paid or incurred thereafter up until the date the claim is filed. For purposes of this paragraph, funeral expenses shall not exceed five thousand dollars (\$5,000).
- (16) If an alternative minimum tax is required to be paid pursuant to Chapter 2.1 (commencing with Section 17062) of Part 10, the amount of alternative minimum taxable income (whether or not cash) in excess of the regular taxable income.



(17) Annual winnings from the California Lottery in excess of six hundred dollars (\$600) for the current year.

(b) For purposes of this chapter, total income shall be determined for the calendar year (or approved fiscal year ending within that calendar year) which ends within the fiscal year for which assistance is claimed.

(c) For purposes of Chapter 2 (commencing with Section 20581), Chapter 3 (commencing with Section 20625) and Chapter 3.5 (commencing with Section 20640), total income shall be determined for the calendar year ending immediately prior to the commencement of the fiscal year for which postponement is claimed.

SEC. 9. Section 20505 of the Revenue and Taxation Code is amended to read:

20505. “Claimant” means an individual who—

(a) For purposes of this chapter was either (1) 62 years of age or older on the last day of the calendar year or approved fiscal year designated in subdivision (b) or (c) of Section 20503, whichever is applicable, or (2) blind or disabled, as defined in Section 12050 of the Welfare and Institutions Code on the last day of the calendar year or approved fiscal year designated in subdivision (b) of Section 20503, who was a member of the household, and who was either: (1) the owner and occupier of a residential dwelling on the last day of the year designated in subdivision (b) or (c) of Section 20503, or (2) the renter of a rented residence on or before the last day of the year designated in subdivision (b) of Section 20503. An individual who qualifies as an owner-claimant may not qualify as a renter-claimant for the same year.

(b) (1) For purposes of Chapter 2 (commencing with Section 20581), Chapter 3 (commencing with Section 20625), Chapter 3.3 (commencing with Section 20639), and Chapter 3.5 (commencing with Section 20640) was a member of the household and either an owner-occupant, or a tenant stockholder occupant, or a possessory interestholder occupant, or a mobilehome owner-occupant, as the case may be, of the residential dwelling as to which postponement is claimed on the last day of the year designated in subdivision (b) or (c) of Section 20503, and who was 62 years of age or older by December 31 of the fiscal year for which postponement is claimed.

(2) For purposes of Chapter 2 (commencing with Section 20581), Chapter 3 (commencing with Section 20625), Chapter 3.3 (commencing with Section 20639), and Chapter 3.5 (commencing with Section 20640) was a member of the household and an owner-occupant of the residential dwelling as to which postponement is claimed on the last day of the year designated in subdivision (c) of Section 20503, and who was blind or disabled, as defined in Section 12050 of the Welfare and Institutions



Code, at the time of application or on December 10 of the fiscal year for which postponement is claimed, whichever is earlier.

(c) Where amounts have been postponed for any given fiscal year and the claimant continues to own and occupy the residential dwelling on December 31 of the calendar year in which the fiscal year begins, and the claimant sells the dwelling and buys a new residential dwelling in this state on or before December 31 of the following fiscal year and the new dwelling is the claimant's principal place of residence, then in that event, the claimant shall be deemed to be a qualified claimant for the purpose of this section. These regulations shall become effective immediately upon filing with the Secretary of State.

SEC. 10. Section 20514 of the Revenue and Taxation Code is amended to read:

20514. (a) Assistance shall not be allowed under this chapter if gross household income, after allowance for actual cash expenditures that are reasonable, ordinary, and necessary to realize income, exceeds thirty-five thousand two hundred fifty-one dollars (\$35,251).

(b) With respect to assistance that is provided by the Franchise Tax Board pursuant to this chapter for the 2002 calendar year and each calendar year thereafter, the gross household income figure that applies to assistance provided by the Franchise Tax Board during that period shall be the gross household income figure that applied to assistance provided by the Franchise Tax Board in the same period in the immediately preceding year, multiplied by an inflation adjustment factor calculated as follows:

(1) On or before February 1 of each year, the Department of Industrial Relations shall transmit to the Franchise Tax Board the percentage change in the California Consumer Price Index for all items from June of the second preceding calendar year to June of the immediately preceding calendar year.

(2) The Franchise Tax Board shall add 100 percent to the percentage change figure that is furnished pursuant to paragraph (1) and divide the result by 100.

(3) The Franchise Tax Board shall multiply the gross household income figure that applies in the immediately preceding year by the inflation adjustment factor determined in paragraph (2), and round off the resulting product to the nearest one dollar (\$1).

SEC. 11. Section 20563 of the Revenue and Taxation Code is amended to read:

20563. (a) The claim on which the assistance is based shall be filed after June 30 of the fiscal year for which assistance is claimed but on or before October 15 of the fiscal year succeeding the fiscal year for which assistance is claimed. The Franchise Tax Board may thereafter accept



claims through June 30 of the fiscal year succeeding the fiscal year for which assistance is claimed.

(b) The state shall assist the claimant after July 15 and before November 15 of the calendar year in which the claim is filed, except that if the claim is defective, assistance shall be made as promptly as is practicable after the claim has been perfected.

(c) A claimant who, because of a medical incapacity, is prevented from filing a timely claim, shall be permitted to file a claim within six months after the end of his or her medical incapacity or three (3) years succeeding the end of the fiscal year for which assistance is claimed, whichever date is earlier.

SEC. 12. Section 20642 of the Revenue and Taxation Code is amended to read:

20642. Except as otherwise expressly provided by this part, the Franchise Tax Board shall administer and enforce this part and the provisions of Chapter 7 (commencing with Section 19501) of Part 10.2 shall apply to this part.

SEC. 13. Section 20645 of the Revenue and Taxation Code is amended to read:

20645. If the Franchise Tax Board determines that assistance has been erroneously granted under this part, or if a claimant is aggrieved by the denial in whole or in part for assistance, then the provisions in Chapters 2 (commencing with Section 18501), 4 (commencing with Section 19001), 5 (commencing with Section 19201), and 6 (commencing with Section 19301) of Part 10.2 shall apply, as if the amount in controversy was a tax, unless the context indicates otherwise. For the purposes of Chapter 7 (commencing with Section 19501) of Part 10.2 (relating to disclosure of information), a claim filed pursuant to this part shall be deemed a tax return and disclosure of information set forth therein is prohibited unless required for administrative purposes by the Franchise Tax Board or the Controller.

